



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Maguire

Respondents: (1) Fifthstreet Management Ltd
(2) 10 Ennismore Gardens Management Ltd

Heard at: London Central

On: 14 March 2017

Before Judge: A Isaacson

Representation

Claimant: Mr J Bryan (Counsel)

Respondents: Ms K Moss (Counsel)

JUDGMENT

The Judgment of the Tribunal is as follows:

The Claimant's claim for a failure to make reasonable adjustments is struck out on the basis it has no prospects of success.

REASONS

1. The starting point for the tribunal's decision to strike out the claimant's failure to make reasonable adjustments claim was to remind itself of the case law which establishes that generally discrimination cases should not be struck out as they are fact sensitive. A discrimination claim should only be struck out in the clearest of cases.
2. Based on the information before the tribunal it concludes that the claimant's claim for a failure to make reasonable adjustments is hopeless and has no prospects of success. Firstly this is based on the time issue. The claimant had been employed since 2001 and her last day at work before she went on sick leave was on 17 September 2014 and her dismissal was on the 2 June 2016. She presented her

claim form on 30 September 2016. At no time throughout her employment did she ever raise with the respondents that they were failing in their duty to make reasonable adjustments. In fact in her witness statement dated 10 March 2017 she states that *“In relation to the facilities being off-site I didn’t complain because I was allowed to use my own home facilities without question”*.

3. The claimant was a cleaner/porter. She has type 2 diabetes and clinical obesity. Where the claimant worked did not have toilet facilities or drinking water facilities. The claimant had to go regularly to the toilet because of her diabetes and needed to drink water. The claimant lived next door to the premises where she worked. It was agreed with the respondents that she could go home for her breaks and to use the toilet.
4. Her claim is clearly out of time. There is no communication with the claimant and the respondent about reasonable adjustments at all when she was working or after she went on sick leave. The claimant confirmed in her statement that she didn’t complain about the facilities. The first time she raises the issue is in her claim form. She had not been working since 17 September 2014, over two years prior to presenting her claim form.
5. The tribunal does not believe a tribunal would exercise its discretion to extend time on the basis it would be just and equitable to do so. Firstly the time limits should be applied strictly and any extension is an exception to the rule. Secondly the claim would not succeed on the basis that the respondents had no knowledge that the claimant was seeking any adjustments or what disadvantage she was alleged to be suffering. The claimant had agreed to work since 2001 with the adjustment that she used her house for breaks and toilet visits. She never told the respondents that she wanted them to instead build a toilet and water fountain in the work premises. The tribunal does not accept the claimant’s representatives argument that it can be inferred that the respondents were expected to know that the claimant was put at a disadvantage by the lack of facilities and therefore it was constructive knowledge. The respondents had made an adjustment and the claimant worked for many years without raising any objections to the arrangement.
6. Had the claimant not lived across the road then the tribunal would have viewed the claim very differently
7. In summary the tribunal finds that the claimant’s claim for a failure to make reasonable adjustments has no prospects of success and should be struck out. The claim is way out of time, the respondent had made adjustments by allowing the claimant to go home for her breaks, the claimant had accepted those adjustments since 2001 and had never raised any objections to the respondents. She confirmed this in a statement dated 10 March 2017. Therefore the respondents could not have known that the claimant was at a disadvantage, if she was at all.

8. Further orders in relation to the remaining claims are set out in a separate case management order.

**Employment Judge Isaacson
Date 14 March 2017**